Supreme Court, U.S.
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No. 96-1641

In The

Supreme Court of the United States

October Term, 1996

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. 66,

Petitioner,

v.

HOUSTON LIGHTING & POWER COMPANY, A SUBSIDIARY OF HOUSTON INDUSTRIES INCORPORATED, AS SUCCESSOR IN INTEREST TO UTILITY FUELS, INC.,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

MEMORANDUM IN OPPOSITION TO PETITION FOR CERTIORARI

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PARTIES TO THE PROCEEDINGS

Petitioner:

International Brotherhood Of Electrical Workers, Local Union No. 66

Respondent:

Houston Lighting & Power Company, a Subsidiary of Houston Industries Incorporated, as Successor in Interest to Utility Fuels, Inc.

RULE 29.6 LIST

Entities Affiliated With Respondent:

Development Ventures, Inc.; HL&P Energy Services Co.; Houston Industries Incorporated; Houston Industries Finance, Inc.; Houston Industries Energy, Inc.; and Utility Fuels, Inc.

This case arose from the same reduction-in-force that resulted in an arbitration award that the United States Court of Appeals for the Fifth Circuit vacated and which this Court subsequently declined to review earlier this Term. *See Houston Lighting & Power Co. v. International Bhd. of Elec. Workers, Local Union No. 66*, 71 F.3d 179 (5th Cir. 1995), *cert. denied*, 117 S. Ct. 52 (1996) (hereinafter, "*Houston Lighting & Power*"). In the instant case, just as in *Houston Lighting & Power*, the arbitrator exceeded his authority under the same collective bargaining agreement ("CBA") and rendered an award that did not draw its essence from the CBA, as the district court and the Fifth Circuit held. (Pet. App. 1 at 8; *id.*, App. 2 at 5-8.)[1] These were the same reasons for the Fifth Circuit's vacatur of the award in *Houston Lighting & Power*. 71 F.3d at 182-84. Both the decision at issue now and the earlier case on which it relied represent straightforward applications of the "essence" test announced in *United Steelworkers of Am. v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597 (1960).

Because *Enterprise Wheel* is clearly controlling here, there is no reason for the Court to grant certiorari in this case. Therefore, the petition for certiorari should be denied.[2]

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[1] The Petitioner readily admits that its complaints about the decision below mirror those that it raised in its petition for certiorari in *Houston Lighting & Power*: "Indeed, the Fifth circuit Opinion in this case and in fact underlying the Decision of the District Court, were both merely derivative of, and a perpetuation of, the Fifth Circuit's original error in the *Thornal* case." (Pet. Br. at 15 n.4.)

[2] Because of the striking similarity of issues in this case and in *Houston Lighting & Power*, Respondent files this memorandum in lieu of a brief in opposition. *See* Robert L. Stern, et al., SUPREME COURT PRACTICE 374 (7th ed. 1993). If the Court desires further briefing, Respondent will certainly comply with that request. Additionally, Respondent incorporates by reference its brief in opposition in *Houston Lighting & Power* (No. 95-1757), which fully sets forth the reasons why the petition in this case should be denied.

Respectfully submitted,

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